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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,251	02/17/2004	Louis Patrone	91943.000092	1474

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MTI - INTELLECTUAL PROPERTY
HARTER, SECREST & EMERY, LLP
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ROCHESTER, NY 14604

EXAMINER

DAVIS, JENNA L

ART UNIT	PAPER NUMBER
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1771

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/780,251

Applicant(s)

PATRONE ET AL.

Examiner

Jenna Davis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-11, 13-15, 19, 20 and 23-27 is/are rejected.
- 7) ☒ Claim(s) 6, 12, 16-18, 21, & 22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Claim Rejection 35 USC 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7-11, 13-15, 19, 20, and 23-27 are rejected under 35 USC 103(a) as being unpatentable over Cohen (US 5736473) in view of Hamilton (US 6562192) as set forth in the September 11, 2006, Office action.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 24, 26, and 27 are rejected under 35 USC 112, first paragraph, substantially as set forth in the September 11, 2006, Office action.

Double Patenting

The terminal disclaimer filed January 11, 2007, is sufficient to overcome the obviousness type double patenting set forth in the September 11, 2006, Office action.

Response to Arguments

Applicant's arguments with regard to the combination of the teachings of Cohen in view of Hamilton are not commensurate in scope with the claims that have been presented in the present application. Specifically the claims under examination are drawn to a mixture of wax, a superabsorbent material, and a "channeling agent" however both Cohen and Hamilton are drawn to absorbent materials that include these materials as set forth on the record in this application. Hamilton expressly suggests using waxes to improve processing of such absorbent materials as set forth on page 2 of the last Office action and as pointed out with reference to Hamilton column 21-22 and in the Hamilton claims 3, 6, and 11.

The argument that Hamilton does not include superabsorbent materials is refuted by the teachings of Hamilton in column 25, lines 26 to 47 where the reference expressly suggests including superabsorbents in the materials taught therein.

The argument that the cited prior art fails to teach the use of a "channeling agent" is not persuasive as the use of a particular term to describe a material does not patentably define a material from the prior art. Cohen teaches including microcrystalline cellulose in the material disclosed therein. This is the same material which is identified on page 4, last paragraph of the present application as the channeling agent contemplated in the present invention.

The argument that there is no suggestion to modify the teachings of Cohen as set forth previous Office action is not found to be persuasive as Cohen expressly suggests including wax materials in the product disclosed.

The argument that the cited references do not suggest the desirability of the particular combination claimed herein is not found persuasive as the patentability standard under 35 USC

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103 is what would have been obvious to a person of ordinary skill in the art. In the present case the skilled artisan would have appreciated that the use of waxes, superabsorbents, and microcrystalline cellulose in absorbent articles was desirable.

The argument that the rejection set forth in this application is based on improper hindsight is unpersuasive as the Examiner has merely provided a statement of what the prior art teaches and has cited two references drawn from the same field of endeavor that would reasonably have been within the level of skill of a person working in this field.

It is not seen that the present claims are distinguished from the prior art by reference to a "string material." As set forth in the last Office action, Cohen teaches including fibers in the material disclosed therein. It is unclear how a "string" is different from a fiber.

The rejection under 35 USC 112, 1st paragraph is maintained as applicant has only presented a limited number of components that would provide the properties recited herein and has not provided any disclosure as to what equivalents would provide the properties now claimed. The terms "water absorbing means," and "means for encapsulating" are extremely broad when applicant has only disclosed a small number of materials that would meet the aims of the present invention.

Allowable Subject Matter

Claims 6, 12, 16-18, 21, and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

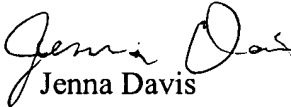
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna Davis whose telephone number is 571-272-3357. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Jenna Davis
Primary Examiner
Art Unit 1771

jld